Supreme Court, U.S.
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No. 96-819

In The

Supreme Court of the United States

October Term, 1996

WAYNE SOIGNIER,

Petitioner,

vs.

THE AMERICAN BOARD OF PLASTIC SURGERY, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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Respondent, the American Board of Plastic Surgery, Inc.,[1] respectfully suggests that this Court deny the Petition for a Writ of Certiorari filed by Petitioner Wayne Soignier.

Supreme Court Rule 10 provides that "[a] petition for writ of certiorari will be granted only for compelling reasons."[2] Petitioner's petition fails to present a compelling reason for this Court to review this action, and should accordingly be denied.

REASONS FOR DENYING THE WRIT

I.

THE SEVENTH CIRCUIT'S OPINION IS NOT INCONSISTENT WITH AN OPINION OF ANOTHER FEDERAL APPELLATE COURT OR WITH A STATE COURT OF LAST RESORT.

This Court has stated that "[a] principal purpose for which we use our certiorari jurisdiction . . . is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." *Braxton v. United States*, 500 U.S. 344, 347 (1991). The Seventh Circuit's disposition of this action created no disagreement among the United States courts of appeal. As Petitioner's petition concedes, "[t]he Seventh Circuit is the first federal appeals court to address specifically the question of when an ADA public accommodation claim accrues." (Pet. For a Writ of Cert. at 11.)

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1. Pursuant to Supreme Court Rule 29.6, Respondent states that it does not have a parent company or any nonwholly owned subsidiaries.

2. Rule 10 identifies three types of cases which are prime candidates for this Court's discretionary review. This action fits into none of these three enumerated categories.

There is likewise no inconsistency between the Seventh Circuit's opinion and an opinion of a state court of last resort. A state case upon which Petitioner's petition heavily relies, *Hinman v. Yakima Sch. Dist.*, 850 P.2d 536 (Wash. Ct. App. 1993), *review denied*, 889 P.2d 498 (Wash. 1994), is not from the highest court of that state, but is rather from an intermediate-level appellate court. Moreover, *Hinman* did not involve an issue of federal law. Instead, it was concerned with the accrual of the statute of limitation under Washington law. As a result, the existence of *Hinman* fails to present a compelling reason for this Court to grant review of this action.

II.

THE SEVENTH CIRCUIT'S OPINION IS IN HARMONY WITH CONTEMPORARY CIVIL RIGHTS LAW.

The Seventh Circuit's opinion below was a logical and appropriate application of *Delaware State College v. Ricks*, 449 U.S. 250 (1980), in which this Court held that a plaintiff's use of an internal grievance procedure did not extend the time period during which the plaintiff must file a race discrimination charge under Title VII of the Civil Rights Act of 1964. By making the standard for accrual of a cause of action in the current action under the ADA the same as that under Title VII, the Seventh Circuit has promoted uniformity in the application of the federal anti-discrimination laws.

Analogizing the ADA to Title VII is also consistent with congressional intent, *see, e.g.*, 42 U.S.C. § 12188 (provision of ADA incorporating remedies and procedures of Title VII) and certainly does not mark an unwarranted departure from the development of civil rights jurisprudence. *See, e.g., McNely v. Ocala Star-Banner Corp.*, 99 F.3d 1068 (11th Cir. 1996)

(noting that the language regarding liability under the ADA is "substantially identical" to the language contained in Title VII); *Carparts Distrib. Ctr., Inc. v. Automotive Wholesaler's Ass'n*, 37 F.3d 12 (1st Cir. 1994) (concluding that the definition of the term "employer" is not significantly different under the ADA than it is under Title VII); *Stephens v. Kay Management Co.*, 907 F. Supp. 169, 171 (E.D. Va. 1995) (stating that decisions interpreting Title VII "provide useful assistance in interpreting similar provisions of the ADA respecting the extent to which a supervisor may be held personally liable for employment decisions"); *West v. Russell Corp.*, 868 F. Supp. 313 (M.D. Ala. 1994) (applying the indirect evidence burden-shifting methodology used under Title VII in ADA action). There is therefore no compelling reason for this Court to grant certiorari in this action.

CONCLUSION

For the foregoing reasons Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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